



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-117

May 31, 2023

In re: Lynn Hesselbrock/Spencer County Judge/Executive's Office

Summary: The Spencer County Judge/Executive's Office ("the agency") did not violate the Open Records Act ("the Act") when it did not respond to a request it did not receive.

Open Records Decision

On April 21, 2023, Spencer County Clerk Lynn Hesselbrock ("Appellant") allegedly submitted a request by email to the agency for a copy of "any and all communications" between the Deputy Judge/Executive "and any current or former employees of the Spencer County Clerk's Office" between January 1 and April 21, 2023. After receiving no response, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency must respond to a request to inspect public records within five business days after receiving it. On appeal, the agency claims it never received the Appellant's request because the Appellant's email address had been blocked by the records custodian.¹ The agency points out that the copy of the Appellant's request submitted to this Office does not contain a date or time stamp, and further alleges the Appellant admitted to receiving an undeliverable notice when she attempted to email her request. This Office is unable to resolve factual disputes between a requester and a public agency, such as whether the agency received a request. *See, e.g.*, 21-ORD-163. Therefore, this Office cannot find that the agency violated the Act when it did not respond to a request it claims to have never received.

¹ The agency asserts it has "corrected the deficiency" of blocking the Appellant's email address and has provided all responsive records in its possession to the Appellant "within five (5) days of its actual receipt of the request."

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#170

Distribution:

Lynn Hesselbrock, Clerk
Cheryl R. Winn, Esq.
Corey M. Thomas, Esq.
Hon. Scott Travis